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The Supreme Court of the United States

OCTOBER 19, 1943, TERM

No. **778**.....

MITCHELL IRRIGATION DISTRICT,

a Corporation,

Petitioner,

vs.

JOHN A. WHITING, JR., Water Commissioner, District 14,

Division 1, State of Wyoming,

Respondent

Brief in Opposition to Petition for Writ of Certiorari

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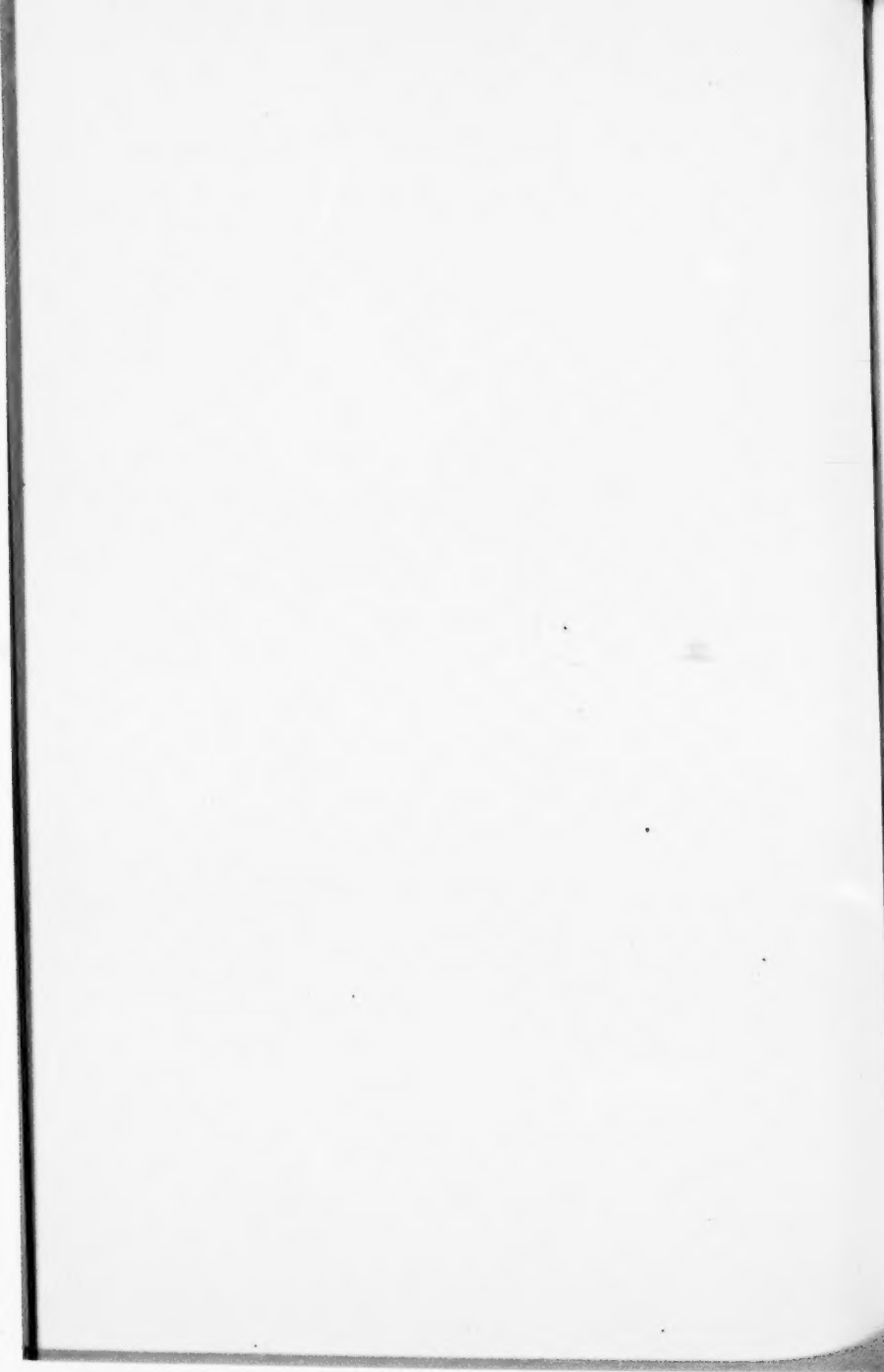


INDEX

| | Page |
|------------------------|------|
| STATEMENT OF CASE..... | 1 |
| ARGUMENT | 2 |
| CONCLUSION | 4 |

AUTHORITIES CITED

| | Page |
|---|------|
| Flourney v. Wiener, No. 252, decided by this Court February 28, 1944..... | 4 |
| Chicago, Great Western Rwy. Co. vs. Kendall, et al, 266 U. S. 94; 69 L. Ed. 183..... | 4 |
| Vandalia Rwy. Co. vs. Schnull, 255 U. S. 113; 65 L. Ed. 539 | 4 |
| St. Romes v. Levee Steam Cotton Press, 127 U. S. 614; 32 L. Ed. 289..... | 4 |
| McGowan v. Columbia River Packers' Assn., 245 U. S. 352; 62 L. Ed. 342..... | 4 |
| McLaughlin v. Swann, 18 How. 217; 15 L. Ed. 357..... | 4 |
| Baxter v. Buchholz-Hill Transportation Co., 227 U. S. 637, 57 L. Ed. 681..... | 4 |
| Abraham v. Casey, 179 U. S. 210, 45 L. Ed. 156..... | 4 |



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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF CASE

This case arises out of an action which was commenced by the petitioner in the District Court of the First Judicial District of the State of Wyoming, within and for the County of Goshen. The purpose of the action was to secure a mandatory injunction requiring the respondent to administer the use of the water of the North Platte River within his district in a certain manner and to distribute a certain amount of water to the petitioner. The case was tried to Honorable Harry P. Ilsley, District Judge presiding, and resulted in a judgment dismissing the action without prejudice.

At the request of counsel, the trial court made separate conclusions of fact and conclusions of law and filed them in the case. (Transcript of Record, Pages 34-41.)

The eleventh conclusion of law reads as follows:

“That the owners of the Lucerne, The Torrington, the Rock Ranch Enlargement, the Burbank, and the Graten Canal Enlargement in Wyoming, and the Tri State, the Ramshorn, the Minatare, the Winters Creek, the Enter-

prise, the Castle Rock, the Logan and the Belmont Canals, in Nebraska—the same being other users of waters from the North Platte River—are indispensable parties to a determination of the rights of the plaintiff herein, and the rule that a defect of parties is waived by defendant joining issue and going to trial does not apply, as the Court cannot proceed to issue a mandatory injunction without the presence of others who have not been made parties, and, therefore, this action should be dismissed without prejudice.”

Thereupon the Court entered its judgment of April 14,

1942. Omitting the formal parts, the judgment is:

“It Is, Therefore, Considered and Adjudged by the Court that plaintiff take nothing by its petition and that the injunction prayed for in plaintiff’s petition be denied; that this petition be dismissed without prejudice; and that defendant have its costs and expenses herein disbursed and taxed at \$.”

(Transcript of Record, 42.)

The petitioner appealed the case to the Supreme Court of the State of Wyoming. On April 27, 1943, the Supreme Court of Wyoming announced the decision and sustained the judgment of the trial court. (Transcript of Record 175-195.)

A Petition for rehearing was filed and the Supreme Court of the State of Wyoming denied such petition. (Transcript of Record 197.) The judgment of the Supreme Court affirming the decision of the trial court appears at Page 195 of the Transcript of Record.

For the purposes of our argument, we consider that no further statement of the case is required.

ARGUMENT

The petitioner made certain allegations in its pleading and certain assignments of error claiming that the action of

the trial court and also of the Supreme Court of the State of Wyoming is in violation of certain provisions of the Constitution of the United States and also in violation of certain provisions of the Constitution of the State of Wyoming.

It will be observed that in deciding the case, the Supreme Court of the State of Wyoming did not discuss any constitutional questions. That court sustained the conclusion of law of the trial court that the case should be dismissed without prejudice because of the absence of necessary parties. (Transcript of Record 190-192.)

This method of disposing of a case where necessary parties are absent is specifically authorized by the statutes of the State of Wyoming. The statute to which we refer is Sec. 89-521, Wyo. Rev. Statutes, 1931. This statute reads:

“The Court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by waiving their rights; but when a determination of the controversy cannot be had without presence of other parties, the Court may order them to be brought in or dismiss the action without prejudice.”

As we have stated, applying this statute, the trial court held that this action should be dismissed without prejudice because of the absence of necessary parties and the Supreme Court of Wyoming sustained this construction and application of the statute. This disposes of the entire case so far as the action originally brought in the District Court of Wyoming is concerned. The discussion of the Supreme Court of other questions which give additional support to the action of the trial court is not material. The case is disposed of by the finding that it must be dismissed without prejudice and the sustaining of that finding and the judgment of the court carrying that finding into effect by the Supreme Court of Wyoming. This renders the consideration of any other questions by this court upon the petition for Writ of Certiorari unnecessary.

IV.

Flourney vs. Wiener, No. 252, decided by this Court Feb. 28, 1944; Chicago Great Western Railway Company vs. Kendall, et al, 266 U. S. 94; 69 L. Ed., 183.

The case having been dismissed without prejudice, the judgment is not final and all questions relative to the merits of the case remain open for further consideration and disposition in future litigation.

Vandalia Railway Company vs. Schnull, 255 U. S. 113; 65 L. Ed. 539; St. Romes vs. Levee Steam Cotton Press, 127 U. S. 614; 32 L. Ed. 289; McGowan vs. Columbia River Packers' Assn., 245 U. S. 352; 62 L. Ed. 342; McLaughlin vs. Swann, 18 How. 217; 15 L. Ed. 357; Baxter vs. Buchholz-Hill Transportation Co., 227 U. S. 637; 57 L. Ed. 681; Abraham vs. Casey, 179 U. S. 210; 45 L. Ed. 156.

Therefore, we submit that the Writ of Certiorari should be denied. The decision that the case should be dismissed for want of necessary parties is a matter for the State Court and the decision that under the statute the case should be dismissed without prejudice is also a matter for the State Court. The decision and action of the State Court upon these two points dispose of the case and render it entirely unnecessary to consider any constitutional or other federal question.

Respectfully submitted,

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